UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,733	02/09/2004	Karl Dias	021756-004100US	1531

51206	7590	10/16/2006

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EXAMINER
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ART UNIT	PAPER NUMBER
2863	

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/775,733	DIAS ET AL.
	Examiner	Art Unit	
	Edward R. Cosimano	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>22 September 2006</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-39</u> is/are pending in the application.

   4a) Of the above claim(s) <u>none</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-39</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>2/4/04 & 9/22/06</u> is/are: a)☐ accepted or b)☒ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some *   c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

1.   The Oath/Declaration and Abstract as originally filed are acceptable to the examiner.

2.   Applicant's claim for the benefit of an earlier filing date pursuant to 35 U.S.C. 119(e) is acknowledged.

3.   The combined set of drawings containing figures 2 & 3 as presented in the set of drawings filed on 09 February 2004 and figures 1, 4 & 6 as presented in set of drawings filed on 22 September 2006 are acceptable to the examiner.

4.   The drawings filed 09 February 2004 and 22 September 2006 are objected to because:

        A) the drawings fail to comply with 37 CFR 1.84(p)(5) because they include the following reference legend not mentioned in the description, note reference legend 1100 of figure 5 which has not been mentioned in the written description of figure 5 located in paragraph numbers 49-54, "Figure 5 depicts ... circular buffer 1002 may be accessed faster.", and note in particular paragraph number 49 which was amended on 22 September 2006 to delete the reference to legend 1100 while figure 5 was amended to include reference legend 1100.

        B) The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:

        (1) entire subject matter added by claims 11, 20, 28, 35 & 37 to the base claim;

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4.1   Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5.   The disclosure is objected to because of the following informalities:

A) applicant must update the application data with the current status of each reference application in paragraph number 1.   Note the suggested change to this paragraph below:

(1) "[0001] This application is a non-provisional application of and claims benefit to U.S. Provisional Application No. 60/500864, filed September 05, 2003, now expired (Attorney Docket No.: 021756-003701U5), which is incorporated by reference in its entirety for all purposes.".

B) errors and/or inconsistencies between the drawings filed 22 September 2006 and the written description have been noted:

(1) if applicant chooses not to delete reference legend 1100 from figure 5, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification does not include an explicit reference to this reference legend in the description of figure 5 located in paragraph numbers 49-54, and note in particular paragraph number 49 which was amended on 22 September 2006 to delete the reference to legend 1100 while figure 5 was amended to include reference legend 1100.

C) it is noted that applicant's use of the word "my" in the context of the phrase "active session my be performing a database call" in paragraph number 37 is confusing and it is therefore suggested that paragraph number 37 be amended as follows:

--[0037] In step 904, if it is not time to capture information, the method reiterates to step 902. If it is time, the method proceeds to step 906, where one or more active sessions in database system 105 are determined. In one embodiment, information from active sessions and not inactive sessions is captured. An active session is a session that is actively performing an operation at the time. For example, an active session [[my]] may be performing a database call or a thread in database server 105 may be executing an

operation. An inactive session is a session that is not doing work. For example, an inactive session may be in between database calls or waiting for a resource.--.

5.1   Appropriate correction is required.

6.   How Claims are to be interpreted during the prosecution of an application for patent.

6.1   The pending claims are interpreted by giving the language of every positively recited limitation of the pending claims the broadest reasonable interpretation that is consistent with how one of ordinary skill at the time of the invention would have interpreted the language of the claims, In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999), while (1) taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification, In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997), and (2) without reading unrecited limitations from applicant's disclosure in to the claims, see In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969) "We are not persuaded by any sound reason why, at any time before the patent is granted, an applicant should have limitations of the specification read into a claim where no express statement of the limitation is included in the claim.", In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969).

6.1.1   Further, when interpreting the claims as a whole, then the interactions of claim limitations as a whole must be considered in order to determine the scope of a claim and the applicant's contribution in the art, In re LARSEN, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished) "The court observed that the totality of all the limitations of the claim and their interaction with each other must be considered to ascertain the inventor's contribution to the art.". Where a statutory process/machine must contain an operative series of acts/functions or structures, In re MUSGRAVE, 167 USPQ 280 at 289-290 (CCPA 1970), with explicitly recite all of the necessary interactions to accomplish the recited utility of the claimed invention, for without these interaction the claim as a whole would not be a proper process/machine under the statue, In re SARKAR 200 USPQ 132 at 136 (CCPA 1978).

6.1.2   In regard to the limitations on the interpretation of the claimed invention as imposed by the Court, it is noted that applicant has gone to great lengths in the written description to describe each of the disclosed means or acts by not describing a specific structure for each of means or a specific act but by describing the means or act by describing the function of each of the means or

acts. Hence, it is noted that as set forth by the Court each of the limitations of the claims could be reasonably interpreted by one of ordinary skill at the time of the invention as not being not limited to the corresponding disclosed structure/act but in fact would to be broadly interpreted to include any and all means/structures that would provide the corresponding functions or acts that are recited as the claimed invention, see for example:

A) the paragraph number 7, where applicant broadly describes a "session" as being connected to a database, see "[0007] **As users connect to a database to request operations, sessions are assigned to the users**. A database ... database system down.";

B) the paragraph number 37, where applicant broadly describes an "active session" as the time that the user is connected to the database whiled the database is performing an operation regarding a requested operation and an "inactive session" as the time whiled the database is not performing an operation regarding a requested operation, see "[0037] In step 904, if it is not time to capture information, the method reiterates to step 902. If it is time, the method proceeds to step 906, where one or more active sessions in database system 105 are determined. In one embodiment, information from active sessions and not inactive sessions is captured. **An active session is a session that is actively performing an operation at the time. For example, an active session my be performing a database call or a thread in database server 105 may be executing an operation. An inactive session is a session that is not doing work. For example, an inactive session may be in between database calls or waiting for a resource.**"; and

C) the paragraph number 23, where applicant broadly describes a "database" and the "database system" as a collection of data, see "[0023] **In one embodiment, database system 105 includes a database 106 and database server 107. Database server 107 is configured to receive and process requests for database 106. Database system 105 may be any database system and a person skilled in the art will appreciate other components and variations to database system 105. Fig. 6 provides a general description of a database system.**";

{emphasis added}, where applicant has described the structure of the disclosed invention by describing the use of suitable generic electrical components and suitable configuration of generic

processing components to implement the invention, with out reciting that a specific device with specific attributes is used to implement the invention.

7.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7.1   Claim(s) 11, 20, 28, 35 & 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7.1.1   In regard to the subject matter recited in claims 11, 20, 28, 35 & 37, it is noted that subject matter recited in process claims 11 & 28, machine claim 20, and manufacture claims 35 & 37 has the common theme. This theme as recited is (1) determining if received/captured information includes an incomplete session; (2) determining that the received information is incomplete; and (3) adding the received information whether it is complete or not to the session. See:

11. (Original) The method of claim 1, further comprising:

determining captured information that includes a session that has incomplete information;

determining when the incomplete information is received; and

adding the received information to a sample for the session.

20. (Original) The apparatus of claim 13, further comprising a process configured to determine if a session includes incomplete information and to add the information to a sample for the session when it is captured.

28. (Original) The method of claim 22, further comprising:

determining captured information that includes a session that has incomplete information;

determining when the incomplete information is received; and

adding the received information to the session.

35. (Original) The computer program product of claim 31, further comprising:

code for determining captured information that includes a session that has incomplete information;

> code for determining when the incomplete information is received; and

> code for adding the received information to a sample for the session.

> 37. (Original) The computer program product of claim 36, further comprising:

> code for determining captured information that includes a session that has incomplete information;

> code for determining when the incomplete information is received; and

> code for adding the received information to the session.

To provide support for applicant's arguments that the subject matter of claims 11, 20, 28, 35 & 37 is both depicted in the drawings as required 37 CFR 1.83(a) and supported in the disclosure as required by 37 CFR 1.75(d)(1) applicant points to paragraphs 32 & 33 of the specification. To this end, applicant argues that the depiction and description of Session Activity Monitor (SAM) 802 both illustrates and supports this subject matter.

7.1.2   The examiner sets forth that the depiction and description of SAM 802 neither illustrates nor supports this subject matter as required. As can be seen in these paragraphs, the subject matter that is disclosed would merely convey to one of ordinary skill at the time the invention was made that SAM 802 merely periodically receives/captures/acquires snapshots of information that may be either a complete record or incomplete record of activity during a session and that the received/captured/acquired snapshots of information are added to an unknown sample. By this process, a sample would provide a trace of activities occurring during the session. In this regard note:

> "[0032] **SAM 802 is configured to take snapshots of activity for sessions. In one embodiment, snapshots are combined into a sample. The sample does not include all activity for a session 804. Accordingly, a full trace of information is not taken in one embodiment.**

> [0033] **SAM 802 is configured to capture information from sessions 804 at certain times during a time interval.** For example, a time interval, such as every second, may be used for capturing information. **At every interval, SAM 802 captures information from sessions 804. Thus, a snapshot of information is captured at certain times rather than a full trace of activity. A sequence of snapshots may be referred to as a sample of the session history. A set of samples do not include all**

information but may be sufficient to determine the activity for sessions and the database as a whole. For example, if an operation is performing an action for three seconds, a snapshot at every second will capture information for the action. When a new action is started, the next snapshot captures information about the new action. **Thus, what a session 804 is doing over a period of time may be determined even though a full trace of information is not recorded.** Consumers of the captured information may determine that the information is statistically significant by using well known statistical analysis before drawing conclusions.", {emphasis added}.

In view of the disclosed operation of SAM 802, one of ordinary skill at the time the invention was made would recognize that the disclosed periodic acquiring of snapshots of information does not equate to the claimed subject matter regarding the process acts or functions of (1) determining if received/captured information includes an incomplete session; and (2) determining that the received information is incomplete; that are commonly recited in claims 11, 20, 28, 35 & 37.

7.1.3   In view of the above discussion regarding the operation of SAM 802 that is depicted as a single labeled box within a "Database system 105", see figure 2, it can not be seen how one of ordinary skill at the time the invention was made would recognize a box with out a depiction of any of the details of exactly what functions are attributed to the depicted feature, could adequately support or depict the subject matter recited in the claims 11, 20, 28, 35 & 37 as the process acts or functions of: "determining if received/capture information includes a session that has incomplete information" and "determining when incomplete information has been received/captured" and "adding the received information to the session".

7.1.4   In view of the above regarding to the subject matter recited in claims 11, 20, 28, 35 & 37, the written description fails to provide a written description of the entire subject matter added by each indicated dependent claim to the base claim, and therefore the subject matter added by this claim lacks antecedent basis in the disclosure.

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

     (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

matter sought to be patented and the prior art are such that the subject matter as a whole

would have been obvious at the time the invention was made to a person having ordinary

skill in the art to which said subject matter pertains. Patentability shall not be negatived

by the manner in which the invention was made.

8.1   Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Womble

(5,488,648) in view of the evidence provided by either Mac Arthur (3,324,458) or Miller et al

(3,351,910) or Cihiwsky et al (4,994,986) or Lu (2004/0044500).

8.1.1 In regard to claims 1-5, 10-15, 18-23 & 27-30, Womble ('648) discloses a computer

implemented process/machine that under the control of an operating program stored in a

computer accessible storage device provides the function of event/fault detection and diagnosis

in a machine/process. To this end Womble ('648) discloses the creation of a first database by

continuously monitoring and sampling the current operation of a machine/process by acquiring

data/information indicative of the active or inactive state of each monitored part of the

machine/process. Next, the monitored data/information in the first database is passed through an

event filter 21 in order to determine when the sampled data/information about at least one

operation of the machine/process that is contained in the first database is indicative of an active

operation that an user at 27 computer has defined as being of interest. When an user defined

active event of interest is detected, then it is determined that the first database should be sampled

by capturing and storing a snapshot of the data/information from the first database as a

history/event log in a second database 25. This process of capturing and storing data/information

in the second database, as would be recognized by one of ordinary skill at the time the invention

was made would produce a sequence of snapshots of captured and stored data/information

regarding one or more active operations of the monitored machine/process. Finally, an user at

computer 27 may then access the second database of the sequence of snapshots of

data/information regarding the active operation of the machine/process in order to perform an

analysis of the captures and stored data/information regarding the active operation of interest to

the user, (see the second full paragraph of column 3).

8.1.2 Womble ('648) does not disclose that the monitoring, filtering and recording process that

produces the snapshots of data/information is performed either once or periodically and whether

or not this monitoring is performed internal or external to the monitored process. However, in

the environment of event monitoring, either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihiwsky et al ('986) in 1991 or Lu ('500) with an effective date of September 04, 2003 disclose a computer implemented process in which a computer is used to either continuously or periodically remotely sense the current operating state/condition of a machine/process, compare the sensed condition to predetermined criteria and then display sensed information and the results of the comparison at a central location. Further Miller et al ('910) discloses that the monitored variable may also be recorded only when there is a change in the variable. Where the use of a computer to perform the combination of remote monitoring and centrally displaying information makes it faster and easier for an operator to properly diagnose faults in the operation of the machine/process and periodic logging of data/information reduces the amount of data required to be stored for event detection and diagnosis.

8.1.3   Since, one of ordinary skill at the time the invention was made would recognize that neither (1) the detection and analysis of a single event nor (2) the unrestrained monitoring and storing a large amounts of data/information that is unrelated to the event of interest in the machines/processes of Womble ('648) would create a very meaning analysis of an active event of interest to the user, it would have been obvious to one of ordinary skill at the time the invention was made that the event logging and analysis machines/processes of Womble ('648) could be modified to either remotely or internally monitor the operating condition of the machine/process and then to periodically/repeatedly capture and log/store sufficient data/information about the operation of the machine/process to properly characterize the event of interest as suggested by the teachings of either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihiwsky et al ('986) in 1991 or Lu ('500).

8.1.4   In regard to claims 6-7, note the teachings of either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihiwsky et al ('986) in 1991 or Lu ('500) regarding the need to log enough desired data/information so as to provide a meaningful event analysis.

8.1.5   In regard to the nature of the data captured as recited in claims 8-9, note the teachings of either Womble ('648) or Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihiwsky et al ('986) in 1991 or Lu ('500) regarding the need to log data/information that would provide a meaningful representation of the current operation of the machine/process so that a meaningful result of the event detection and analysis be provided to the user/operator.

8.1.6   In regard to the temporary storage of claims 16-17 & 24-26, it is noted that one of ordinary skill at the time the invention was made would recognize that computer systems include the use of a temporary working memory to store data/information while processing the data/information.

8.1.7   In regard to claims 31-39, it is noted that one of ordinary skill at the time the invention was made would recognize the combination of the operating program that is stored with in the memory of the machine of Womble ('648) as modified by either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihiwsky et al ('986) in 1991 or Lu ('500) and would control the operation of the machine/process of Womble ('648) as modified by either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihiwsky et al ('986) in 1991 or Lu ('500) as the invention recited in these claims.

9.   Response to applicant's arguments.

9.1   Objections and rejection that have not been repeated here in have been over come by applicant's last response.

9.2   In regard to both: (A) the continued objection to the drawings for not showing claimed subject matter; and (B) the continued rejection under 35 U.S.C. 112 2nd paragraph for lack of support for claimed subject matter, and in particular the subject matter of claims 11, 20, 28, 35 & 37. For the reasons set forth above in the modified rejection under 35 U.S.C. 112 2nd paragraph this objection and rejection are maintained.

9.3   In regard to the rejection of claims 1-39 under 35 U.S.C. 103, this rejection has been maintained in view of the above rejection and the following considerations.

9.3.1   In regard to applicant's arguments regarding the nature of the "database" or "session" that are recited in the claims 1-39 and in particular as recited in claims 1, 13, 22, 31 & 36. It would appear that applicant has not considered what the knowledge of one of ordinary skill would be regarding the claimed invention, how one of ordinary skill would interpret the limitations of the claimed invention, and has read constraining limitation from the disclosure into the claims, which is a practice that the Court has instructed the Patent Office not to do, see In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969).

9.3.2   In regard to how one of ordinary skill would interpret the limitations of the claimed invention and the knowledge of one of ordinary skill at the time the invention was made. It is

noted that as set forth in independent claim 1, applicant has merely recited the process acts of "determining how many times to sample an unspecified database that contains unspecified data" and that each sampling requires the sub-acts or sub-functions of: (1) determining an active session; (2) capturing unspecified data/information about the active session; and (3) storing the captured unspecified data/information in an unspecified device or database, where the captured and stored data/information is not positively recited as being used for any reason or purpose. Next considering what has been as pointed out above in section 6.1.2 regarding applicant's disclosure and the language used in the limitations of the claimed invention, it is noted that one of ordinary skill at the time the invention as made would recognize that applicant has failed to provide either: (1) a positively recited limitation, or (2) a written description, that would limit the interpretation of the disclosure and claims by one of ordinary skill at the time the invention was made, as:

A) the recited "data base" to any particular database or to a "database" that contains specific data/information";

B) the "captured" and "stored" data/information to the capturing and storing of any specific data/information in any specific manner at any specific period or time; and

C) an "active session" or an "inactive session" to any particular activity regarding the database other than an "active session" is when the database is performing an operation regarding a requested function and an "inactive session" is when the database is not performing an operation regarding a requested function.

Since the guidance provided by applicant's disclosure fails to provide an limits on the interpretation of the language used in the limitations that are recited as the claimed invention, one of ordinary skill at the time the invention was made would interpret the limitations recited as the claimed invention to include any machine/process that has the ability of perform monitoring of machine/process, make a determination/detection of an event and in response to the determination/detection capture and store data/information. In view of the above, one of ordinary skill at the time the invention was made would recognize that the machine/process of Womble (5,488,648) is within the scope of the claimed invention because the machine/process of Womble (5,488,648) performs each of the process acts and/or functions recited as the invention as set forth above by the examiner.

9.3.3   In view of the above, the examiner's application of Womble (5,488,648) to claims 1-39 is consistent with how one of ordinary skill at the time the invention was made would have interpreted both: (1) the instant claims and disclosure, and (2) the teachings of the prior art with the aid of any guidance provided by the instant disclosure.

9.3.4   Finally, in regard to the teachings of the prior art in process claims 1-12 & 22-29, machine claims 13-21, and article/machine claims 31-36. It is noted that claims 13-21 & 31-39 recite a machine as the claimed invention and therefore must be distinguished over the prior art by the structure recited as the claimed invention and not the functions/acts performed by the claimed invention, whereas claims 1-12 & 22-29 recite a process as the claimed invention and therefore must be distinguished over the prior art by the acts performed by the claimed invention and not the structure that performs the acts, see MPEP sections 2111, 2112 & 2114.

9.3.5   With the above in mind, one of ordinary skill at the time the invention was made would see:

A) machine claims 13-21 & 31-39 as reciting a number of structures that "determine how many times to sample an unspecified database that contains unspecified data" and that each sampling requires the sub-functions of: (1) determining an active session; (2) capturing unspecified data/information about the active session; and (3) storing the captured unspecified data/information in an unspecified device or database, where the captured and stored data/information is not positively recited as being used for any reason or purpose; and

B) process claims 1-12 & 22-29 as reciting a number of process acts that "determine how many times to sample an unspecified database that contains unspecified data" and that each sampling requires the sub-acts of: (1) determining an active session; (2) capturing unspecified data/information about the active session; and (3) storing the captured unspecified data/information in an unspecified device or database, where the captured and stored data/information is not positively recited as being used for any reason or purpose.

9.3.6   In applicant's arguments, applicant argues that the purpose of Womble (5,488,648) is different and that Womble (5,488,648) does not capture or use the same data/information in the same manner as is recited in the limitations of the claims. It noted that as set forth in MPEP

2123(II) the mere fact that an invention that contains of the recited structures or process acts, see above, but is for a different purpose does not render the claimed invention as either not "anticipated" or "unobvious" in view of the applied prior art. Further, it is noted that the data/information that is in the database or is captured and stored as a sample as recited in machine claims 13-21 & 31-39 or process claims 1-12 & 22-29 does not affect the operation of either: (1) the structures that are recited as the invention in machine claim 13-21 & 31-39; or (2) the functions/acts that are recited as the invention in process claim 1-12 & 22-29. Hence the data/information that is process by the claimed invention is "non-functional descriptive material" that may not be used to render a claimed invention that otherwise is either "anticipated" or "obvious" as either not "anticipated" or "unobvious", see "Cf. In re GULACK, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).".

10.   The examiner has cited prior art of interest, for example:

A) Singer et al (3,344,408) discloses machine/process in which a central location is used to monitor and record data/information regarding a number of remote machines/processes.

B) Johnson et al (5,349,662) discloses a machine/process in which an user defines events regarding user activity that are to be logged and the machine/process waits until an user defined event is detected. Once the user defined event is detected, then the machine/process logs the detected event and repeats the process of logging by waiting for the next time that an user defined event is detected.

C) Yee et al (5,872,976) discloses a machine/process in which the operation of another machine/process in monitored and data/information about the monitored machine/process is logged in a database. At the request of an user that contains an identification of an event, the database of logged events is scanned/searched/mined for the user identified event and the results are communicated to the requesting user.

D) Pisecky (WO 02/06949 A2) discloses a machine/process in which the total time of execution of a task/event is determined by starting a timer when the tack is being executed and stopping a timer when the task is not being executed.

11.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward R. Cosimano whose telephone number is 571-272-0571. The examiner can normally be reached on 571-272-0571 from 7:30am to 4:00pm (Eastern time).

11.1   If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11.2   Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ERC
10/10/2006

Edward Cosimano
Primary Examiner